

AMENDED IN SENATE APRIL 9, 2012

AMENDED IN SENATE AUGUST 31, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 929**

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**Introduced by Assembly Member Wieckowski**

February 18, 2011

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An act to amend Sections 703.140, 703.150, and 704.730 of the Code of Civil Procedure, relating to debtor exemptions.

### LEGISLATIVE COUNSEL'S DIGEST

AB 929, as amended, Wieckowski. Debtor exemptions: bankruptcy. Existing law identifies property of a debtor that is exempt from all procedures for enforcement of a money judgment. Under existing law, those exemptions are available to a debtor in a federal bankruptcy case, whether a money judgment is being enforced by execution sale or other procedure, unless the debtor elects certain alternative exemptions. Existing law requires the Judicial Council to, every 3 years, adjust the amount of the exemptions applicable to that exempt property based on the change in the annual California Consumer Price Index for All Urban Consumers, and to prepare conforming forms for those adjustments. Existing law *also* provides that a specified portion of equity in a homestead, as defined, is exempt from execution to satisfy a judgment debt, and sets forth the amounts of the homestead exemptions available under specified circumstances. *Existing law requires the Judicial Council to, every 3 years, adjust the amount of the exemptions described above based on the change in the annual California Consumer Price Index for All Urban Consumers, as specified.*

This bill would increase the dollar amount of the exemptions for a debtor's interest in motor vehicles, jewelry, and implements, professional books, or tools of the trade of the debtor or the debtor's dependent.

*This bill would, beginning April 1, 2016, and every 3 years thereafter, require the Judicial Council to submit to the Legislature the amount by which the dollar amounts of the homestead exemptions described above may be adjusted based on the change in the annual California Consumer Price Index for All Urban Consumers, as specified.*

This bill would also increase the amounts of the homestead exemptions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 703.140 of the Code of Civil Procedure  
2 is amended to read:

3 703.140. (a) In a case under Title 11 of the United States Code,  
4 all of the exemptions provided by this chapter, including the  
5 homestead exemption, other than the provisions of subdivision (b)  
6 are applicable regardless of whether there is a money judgment  
7 against the debtor or whether a money judgment is being enforced  
8 by execution sale or any other procedure, but the exemptions  
9 provided by subdivision (b) may be elected in lieu of all other  
10 exemptions provided by this chapter, as follows:

11 (1) If a husband and wife are joined in the petition, they jointly  
12 may elect to utilize the applicable exemption provisions of this  
13 chapter other than the provisions of subdivision (b), or to utilize  
14 the applicable exemptions set forth in subdivision (b), but not both.

15 (2) If the petition is filed individually, and not jointly, for a  
16 husband or a wife, the exemptions provided by this chapter other  
17 than the provisions of subdivision (b) are applicable, except that,  
18 if both the husband and the wife effectively waive in writing the  
19 right to claim, during the period the case commenced by filing the  
20 petition is pending, the exemptions provided by the applicable  
21 exemption provisions of this chapter, other than subdivision (b),  
22 in any case commenced by filing a petition for either of them under  
23 Title 11 of the United States Code, then they may elect to instead  
24 utilize the applicable exemptions set forth in subdivision (b).

(3) If the petition is filed for an unmarried person, that person may elect to utilize the applicable exemption provisions of this chapter other than subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(b) The following exemptions may be elected as provided in subdivision (a):

(1) The debtor's aggregate interest, not to exceed ~~seventeen thousand four hundred twenty-five dollars (\$17,425)~~ *twenty-four thousand sixty dollars (\$24,060)* in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence.

(2) The debtor's interest, not to exceed four thousand eight hundred dollars (\$4,800) in value, in one or more motor vehicles.

(3) The debtor's interest, not to exceed ~~four hundred fifty dollars (\$450)~~ *six hundred dollars (\$600)* in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed ~~five thousand dollars (\$5,000)~~ *one thousand four hundred twenty-five dollars (\$1,425)* in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed in value ~~nine hundred twenty-five dollars (\$925)~~ *one thousand two hundred eighty dollars (\$1,280)* plus any unused amount of the exemption provided under paragraph (1), in any property.

(6) The debtor's aggregate interest, not to exceed ~~six thousand seventy-five dollars (\$6,075)~~ *seven thousand one hundred seventy-five dollars (\$7,175)* in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value ~~nine thousand three hundred dollars (\$9,300)~~ *twelve thousand eight hundred sixty dollars (\$12,860)*, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract

1 owned by the debtor under which the insured is the debtor or an  
2 individual of whom the debtor is a dependent.

3 (9) Professionally prescribed health aids for the debtor or a  
4 dependent of the debtor.

5 (10) The debtor's right to receive any of the following:

6 (A) A social security benefit, unemployment compensation, or  
7 a local public assistance benefit.

8 (B) A veterans' benefit.

9 (C) A disability, illness, or unemployment benefit.

10 (D) Alimony, support, or separate maintenance, to the extent  
11 reasonably necessary for the support of the debtor and any  
12 dependent of the debtor.

13 (E) A payment under a stock bonus, pension, profit-sharing,  
14 annuity, or similar plan or contract on account of illness, disability,  
15 death, age, or length of service, to the extent reasonably necessary  
16 for the support of the debtor and any dependent of the debtor,  
17 unless all of the following apply:

18 (i) That plan or contract was established by or under the auspices  
19 of an insider that employed the debtor at the time the debtor's  
20 rights under the plan or contract arose.

21 (ii) The payment is on account of age or length of service.

22 (iii) That plan or contract does not qualify under Section 401(a),  
23 403(a), 403(b), 408, or 408A of the Internal Revenue Code of  
24 1986.

25 (11) The debtor's right to receive, or property that is traceable  
26 to, any of the following:

27 (A) An award under a crime victim's reparation law.

28 (B) A payment on account of the wrongful death of an individual  
29 of whom the debtor was a dependent, to the extent reasonably  
30 necessary for the support of the debtor and any dependent of the  
31 debtor.

32 (C) A payment under a life insurance contract that insured the  
33 life of an individual of whom the debtor was a dependent on the  
34 date of that individual's death, to the extent reasonably necessary  
35 for the support of the debtor and any dependent of the debtor.

36 (D) A payment, not to exceed ~~seventeen thousand four hundred~~  
37 ~~twenty-five dollars (\$17,425)~~ *twenty-four thousand sixty dollars*  
38 *(\$24,060)*, on account of personal bodily injury, ~~not including pain~~  
39 ~~and suffering or compensation for actual pecuniary loss~~, of the  
40 debtor or an individual of whom the debtor is a dependent.

1 (E) A payment in compensation of loss of future earnings of  
2 the debtor or an individual of whom the debtor is or was a  
3 dependent, to the extent reasonably necessary for the support of  
4 the debtor and any dependent of the debtor.

5 *SEC. 2. Section 703.150 of the Code of Civil Procedure is*  
6 *amended to read:*

7 703.150. (a) On April 1, 2004, and at each three-year interval  
8 ending on April 1 thereafter, the dollar amounts of exemptions  
9 provided in subdivision (b) of Section 703.140 in effect  
10 immediately before that date shall be adjusted as provided in  
11 subdivision (d).

12 (b) On April 1, 2007, and at each three-year interval ending on  
13 April 1 thereafter, the dollar amounts of exemptions provided in  
14 Article 3 (commencing with Section 704.010) in effect immediately  
15 before that date shall be adjusted as provided in subdivision (d).

16 (c) On April 1, ~~2013~~ 2016, and at each three-year interval ending  
17 on April 1 thereafter, the Judicial Council shall submit to the  
18 Legislature the amount by which the dollar amounts of exemptions  
19 provided in subdivision (a) of Section 704.730 in effect  
20 immediately before that date may be increased as provided in  
21 subdivision (d). Those increases shall not take effect unless they  
22 are approved by the Legislature.

23 (d) The Judicial Council shall determine the amount of the  
24 adjustment based on the change in the annual California Consumer  
25 Price Index for All Urban Consumers, published by the Department  
26 of Industrial Relations, Division of Labor Statistics, for the most  
27 recent three-year period ending on December 31 preceding the  
28 adjustment, with each adjusted amount rounded to the nearest  
29 twenty-five dollars (\$25).

30 (e) Beginning April 1, 2004, the Judicial Council shall publish  
31 a list of the current dollar amounts of exemptions provided in  
32 subdivision (b) of Section 703.140 and in Article 3 (commencing  
33 with Section 704.010), together with the date of the next scheduled  
34 adjustment. In any year that the Legislature votes to increase the  
35 exemptions provided in subdivision (a) of Section 704.730, the  
36 Judicial Council shall publish a list of current dollar amounts of  
37 exemptions.

38 (f) Adjustments made under subdivision (a) do not apply with  
39 respect to cases commenced before the date of the adjustment,  
40 subject to any contrary rule applicable under the federal Bankruptcy

1 Code. The applicability of adjustments made under subdivisions  
2 (b) and (c) is governed by Section 703.050.

3 ~~SEC. 2.~~

4 *SEC. 3.* Section 704.730 of the Code of Civil Procedure is  
5 amended to read:

6 704.730. (a) The amount of the homestead exemption is one  
7 of the following:

8 (1) One hundred fifty thousand dollars (\$150,000) unless the  
9 judgment debtor or spouse of the judgment debtor who resides in  
10 the homestead is a person described in paragraph (2) or (3).

11 (2) Two hundred fifty thousand dollars (\$250,000) if the  
12 judgment debtor or spouse of the judgment debtor who resides in  
13 the homestead is at the time of the attempted sale of the homestead  
14 a member of a family unit, and there is at least one member of the  
15 family unit who owns no interest in the homestead or whose only  
16 interest in the homestead is a community property interest with  
17 the judgment debtor.

18 (3) Three hundred fifty thousand dollars (\$350,000) if the  
19 judgment debtor or spouse of the judgment debtor who resides in  
20 the homestead is at the time of the attempted sale of the homestead  
21 any one of the following:

22 (A) A person 65 years of age or older.

23 (B) A person physically or mentally disabled who as a result of  
24 that disability is unable to engage in substantial gainful  
25 employment. There is a rebuttable presumption affecting the burden  
26 of proof that a person receiving disability insurance benefit  
27 payments under Title II or supplemental security income payments  
28 under Title XVI of the federal Social Security Act satisfies the  
29 requirements of this paragraph as to his or her inability to engage  
30 in substantial gainful employment.

31 (C) A person 55 years of age or older with a gross annual income  
32 of not more than ~~twenty-two thousand dollars (\$22,000)~~ *twenty-five*  
33 *thousand dollars (\$25,000)* or, if the judgment debtor is married,  
34 a gross annual income, including the gross annual income of the  
35 judgment debtor's spouse, of not more than ~~twenty-nine thousand~~  
36 ~~dollars (\$29,000)~~ *thirty-five thousand dollars (\$35,000)* and the  
37 sale is an involuntary sale.

38 (b) Notwithstanding any other provision of this section, the  
39 combined homestead exemptions of spouses on the same judgment  
40 shall not exceed the amount specified in paragraph (2) or (3),

1   whichever is applicable, of subdivision (a), regardless of whether  
2   the spouses are jointly obligated on the judgment and regardless  
3   of whether the homestead consists of community or separate  
4   property or both. Notwithstanding any other provision of this  
5   article, if both spouses are entitled to a homestead exemption, the  
6   exemption of proceeds of the homestead shall be apportioned  
7   between the spouses on the basis of their proportionate interests  
8   in the homestead.

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